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02/26/97

William Caton, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

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FEB 27 1997

FCC MAIL ROOM

Dear Mr. Caton:

Enclosed is an original and 12 copies of formal comments on the "industry proposal for rating video programming," Docket No. CS 97-55 / FCC 97-34. Please forward the 12th copy to Rick Chessen in cable services (202 418 7042).

A computer text file of this comment may be easily obtained by the FCC internet Webmaster at:
<ftp://ftp.teleport.com/vendors/paratech/ratecom.txt>

Also enclosed is an original and 11 copies of formal comments on the "closed caption NPRM," Docket No. MM 95-176 / FCC 97-4.

A computer text file of this comment may be easily obtained by the FCC internet Webmaster at:
<ftp://ftp.teleport.com/vendors/paratech/capcom.txt>

Following is additional information for the FCC internet Webmaster regarding the availability of computer disks for these documents.

Sincerely,

Tom Anderson
President,
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ATTN: FCC WEBMASTER

The formal comments provided by Para Technologies, Inc. were produced on a Macintosh using FrameMaker. It is impractical to translate them to WordPerfect. We do not yet have Adobe Acrobat to generate PDF files. It is assumed that you cannot easily use a Macintosh text file.

The best solution was to post the documents in text form on our ftp site. This assures correct formatting for web use, guarantees that special characters (e.g. \$,¶) are displayed properly, and strips the resource fork from the files. Please download the files, if you want to post them on your web site.

Ratings Comment: <ftp://ftp.teleport.com/vendors/paratech/ratecom.txt>

Closed Caption Comment: <ftp://ftp.teleport.com/vendors/paratech/capcom.txt>

Regards,

Tom Anderson

paratech@teleport.com

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

FEB 27 1997

In the Matter of)

Closed Caption and Video Description
of Video Programming)

Implementation of Section 305 of the
Telecommunications Act of 1996)

Video Programming Accessibility)

FCC MAIL ROOM

Docket No. MM 95-176

NPRM COMMENT

**FORMAL COMMENTS ON CLOSED CAPTION NPRM
FCC 97-4 / MM DOCKET NO. 95-176**

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FORMAL COMMENTS ON CLOSED CAPTION NPRM

FCC 97-4 / MM DOCKET NO. 95-176

INTRODUCTION

The purpose of §305 of the Telecommunications Act of 1996 is to make new video programming fully accessible through closed captioning. The transition schedule proposed by the Commission will produce no increase in network captioning for another six years, and only a 1% increase in top cable and premium channels in four years. Status quo by the major networks for 7.5 years after enactment of the statute is inconsistent with the purpose of the statute.

The only obstacles to universal captioning are economic in substance. The quantity of captioning is inversely proportional to the cost. Therefore, the single most important factor in increasing the volume of captioning is decreasing the cost. The solution is to establish rules and policies which increase competition and lower costs. The Commission should promulgate policies and rules with the top priority of reducing captioning costs. Almost all other benefits will flow therefrom.

We believe the proposed transition rules are detrimental to (1) small business, (2) open competition, and (3) downward price pressure in the closed caption market-

place. Furthermore, the nonexistence of an active Telecommunications Development Fund represents a failure to support small business in this and other arenas.

We believe the Commission should address "simplistic captioning" which allows partial access through closed captioning. Simplistic captioning can be applicable where the cost burden of top quality captioning is otherwise excessive. Simplistic captioning could be permitted as part of the transition for certain classes of programs, particularly where real time stenography is required.

AMBIGUOUS RULES

The Commission Proposal ambiguously declares that the transition assumes 0% captioning as its starting point, rather than the actual level now distributed by a provider. [FCC 97-4, ¶¶41, 42, 46]. We believe the rules should require (as I construed until reading ¶46, id) that a provider must increase distribution of captioned programming by an amount equal to 25% of the non-captioned programming presently distributed. The latter construction is much more consistent with the purpose of the statute - to increase the amount of captioned programming, rather than maintain the status quo for 6 more years.

TRANSITION RATE

By far, the largest barrier to universal captioning is cost. A healthy caption services industry is competitive, driving down the cost of captioning services, and increasing the volume of captioning. A more linear implementation of the statute will support small business participation, increase competition, place downward price pressure on the industry, and increase the volume of captioning.

A more linear transition, rather than a four step transition will start the process sooner, and further ameliorate the problems identified by the Commission at ¶40. We believe that a 4% increase every three months will much more effectively "grow" the closed caption service industry, than will the 25% step rate proposed. Further, this will create a stable transition work load as opposed to a "mad rush" to meet the 25% requirement at the very end of a two year period. Program producers, program provid-

ers, and captioning services can much more effectively adapt to a more gradual "slow growth" increase, by slowly increasing staff, facilities, and equipment.

The Proposal at ¶¶41, 42 will inevitably result in absolutely no increase in captioning for 2 years. Most programming on commercial broadcast networks is now captioned. [FCC 97-4, ¶13]. Most new syndicated programming is now captioned. [FCC 97-4, ¶14]. Under the proposed transition schedule, which assumes that 0% of programming is now captioned, it will be 6 years before the public sees an increase in network and syndication captioning. This produces an effect inconsistent with the purpose of the legislation.

24% of the top 20 basic cable and the 6 most widespread premium channels are now captioned. [FCC 97-4, ¶15]. Again, under the proposed transition schedule, it will be 4 years before there is more than a 1% increase in captioning from these services.

The present growth rate of the broadcast industry is 17% (First Call Earnings Estimates: SIC 4833 - broadcasters, and SIC 3663 - broadcast equipment manufacturers). A transition rate of 4% per quarter from current captioning levels, is consistent with the existing growth rate in the industry. If broadcasters already support this level of growth in all other areas, there is absolutely no reason they cannot support it for closed captioning.

SMALL BUSINESS IMPACT

A large 25% step will allow growth for only large caption service providers having access to substantial capital, which is necessary to rapidly increase staff, facilities, and equipment, as demand significantly jumps at each 25% step. This further exacerbates the oligopolistic state of the industry, deters competition, maintains high prices, and effectively excludes very small business from participating in the growth process. The long term health of the captioning services industry as a whole will be harmed if the transition schedule undermines participation by very small business.

A more linear slow growth transition supports small business participation in the captioning services industry. This ultimately increases the volume of captioning by increasing competition and reducing costs. These effects are consistent with the purpose of the statute.

METHOD OF CALCULATING TRANSITION

Consistent with a linear 4% per quarter growth rate, the amount of captioning could be calculated over the full quarter, using a formula that gives greater weight to the end of the quarter. Such a system would encourage an orderly, progressive, and constant increase of captioning, and discourage a mad rush at the end of a two year period in order to comply with the absolute minimum requirements acceptable to the Commission. (See Television Ratings Implementation Group definition of what is acceptable to the Commission – “barely adequate” is the broadcast industry standard [FCC 97-34, Appendix p. 8]).

Some terms require definition. “Amount” could refer to time, rather than ordinal number of captioned programs. A “weekly (base period) average” could be the mathematical mean spanning one week, since weekend programming is different than weekday. The “quarterly (periodic) average” applies a weighted formula to all weekly averages from the current quarter to determine compliance at the end of the quarter.

Program owners and providers that meet transition milestones could be rewarded with continued flexibility to determine how they allocate the transition among classes of programs. Those who fail to meet the milestones, could be subject to greater oversight and compelled to meet more stringent requirements. A more stringent transition schedule can be adopted utilizing the variables of (1) owner/provider advertising revenue for commercial programs, or production budget for noncommercial programs; and (2) program class priority. [re: FCC 97-4, ¶138, 50].

BURDEN ON PROVIDERS

The Commission recognizes that although the enforceable regulatory requirement for captioning is placed on a provider, the burden of captioning effectively falls on the program owner. [FCC 97-4, ¶30]. Therefore, applying the transition to each service or channel carried by an MVPD is consistent with equitably distributing the effective burden among program owners. This method also encourages a more linear and diverse transition which supports the closed caption industry as previously described.

The responsibility regarding MVPDs at ¶44 is a question of defining the term “provider.” However, this is a moot question if the rules are applied to each service or channel carried by an MVPD, since each broadcast station retransmitted by the MVPD is also a provider subject to the closed caption transition rules.

With respect to enforcement, there could be two classes of provider, original and secondary. The responsibility should be upon the original provider who contractually negotiates with the program owner. A secondary provider has little if any equitable influence with a program owner as a result of the Commission’s “must carry” rules.

EXEMPT PROGRAMMING

The statement by NAB at ¶64 regarding exemption for local broadcasters who do not produce programming is contrary to the rationale for placing the burden on providers – that they have the equitable power to compel owners/producers to include captioning in programs.

Exact word for word captioning of interstitials could be burdensome. However, rules for interstitial captioning could require that the content be very simplistic and convey only the essential message (simplistic captioning). Interstitials could be captioned in this manner almost as easily as the script for the announcer is written. Some access is better than no access. [re: FCC 97-4, ¶¶64, 79]

Again, captioning of sports is a purely economic issue. Does the program generate sufficient revenue to support a captioning requirement? If the answer is yes, then all other obstacles can be overcome. A DBS dish could be delivered to a stenographer, or they could travel to a sporting event. Captioning could be simplistic, without the need of a stenographer to transcribe sports play by play. Simplistic captions of player stats, penalties, or injury reports would merely require a moderate speed typist, available anywhere. If the sporting event does not generate sufficient revenue (e.g. local high school basketball, poker tournament, etc.) then it would not reach the economic and undue burden thresholds established by the Commission. [re: FCC 97-4, ¶¶66, 84].

An argument for exempting network sports for a lack of encoding equipment at an uplink site is laughable. [FCC 97-4, ¶66, n. 144]. A network never argues that it

can't uplink due to a lack of uplink equipment, costing many times more than a caption encoder. Broadcasters could argue that there is no financial incentive to comply with many FCC rules which require expensive specialized test equipment. If that were the standard, our airwaves would be unregulated and the transmitter with the most power would dominate.

24 hour weather channels could be captioned in a simplistic manner using inexpensive typists rather than real time stenographers. Much weather information is repetitive, prepared in advance, and should not require much real time captioning. [re: FCC 97-4, ¶¶67, 83].

If the gross revenue or production budget of a program is sufficient, a captioning requirement should exist for all Latin alphabet languages. [re: FCC 97-4, ¶72].

The Education Department should provide funding for low budget educational programming, rather than highly profitable network programming. Unfortunately, this appears to be an interagency issue. [re: FCC 97-4, ¶76].

A requirement should not be needed for noncommercial fund raising. In mid/large markets, a fund raiser should see the economic benefits of at least simplistic captioning. It is their loss if they "exempt" a class of financial supporters. More government rules are not the solution to this problem. [re: FCC 97-4, ¶81].

EXEMPTION BASIS

We believe that the most effective exemption basis for commercial programming is gross revenue for a program, plus projected gross revenue from successive airing or distribution. This criteria factors in market size, degree of distribution, audience share, and rebroadcast. Broadcasters already have this type of information readily available in order to determine production budgets and advertising rates. [re: FCC 97-4, ¶71].

The exemption basis for noncommercial programming cannot be gross revenue. In this case those factors which determine advertising revenue for commercial operations could be considered, or the production budget could form an exemption basis.

We encourage the Commission to consider exemptions which are temporary or conditional, based upon technological and economic factors. Technology will most likely emerge in the future which will automate various captioning processes. This has already happened with ENR captioning, and will probably happen in other areas. As the transition to universal captioning reaches maturity, captioning volume will be greater, more caption service providers will exist, competition will be greater, and the costs of captioning will likely be lower. [re: FCC 97-4, ¶102].

LIBRARY PROGRAMMING

Again, the sole issue is the economics of captioning. If a library program is distributed to a wide enough audience, then the owner or provider earns sufficient revenue to justify a requirement for captioning. In essence, the cost of captioning becomes similar to a tax, and library programs below a certain revenue level should be exempt. In other words, the captioning "tax" should be progressive. This concept is consistent with the statutory exemptions for economic and undue burdens, balanced against the requirements to maximize availability. This commentator is not qualified to assign specific numeric targets or thresholds for captioning requirements or exemptions of library programming.

A time deadline for narrowly distributed library programming will likely prove counter productive for the reasons stated in the Proposal at ¶58. Furthermore, technologies will most likely emerge which will automate much of the captioning process and greatly reduce costs. However, the proposed transition schedule seems too passive for widely distributed and profitable library programming.

Owners of library programming may argue the contractual exemption of §713(d)(2). [re: FCC 97-4, ¶87]. This potential "loophole" should be addressed in the rules promulgated by the Commission.

TECHNICAL STANDARDS

We urge the Commission to establish a deterrent for violation of §15.119 and §76.606 of the rules. Providers should be required to properly distribute caption data which accompanies programming, regardless of whether a provider performs edits.

This is an economic question that each provider must decide based upon free market forces. Providers must ask themselves, which is more cost effective: distribute a program as received, edit the program and reformat captioning, or require the owner to provide an edited and reformatted version of the program?

If a provider wishes to utilize a signal format incompatible with NTSC, RS-170A, and EIA-608 standards, then the provider already provides hardware which converts the unique format back to the industry standard format. We see little reason why a provider can deliver RS-170A video and audio, but could not provide EIA-608 caption data. [re: FCC 97-4, ¶49].

The question at ¶48 is, will future technologies eliminate the need to deliver video, audio, or caption data to a consumer reception device? The answer is when the provider is eliminated from the process of delivering program data. At that time the Commission will be able to amend the rules and redefine the term "provider" as needed. Until such time that a provider no longer distributes program data, a requirement should exist to deliver caption data, in addition to video and audio data. This is consistent with the purpose of the statute.

The technical requirements proposed by the Commission are critical to insuring delivery of caption data to the public. We strongly urge the Commission to issue mandatory rules for the quality criteria listed at ¶106:

6. reformatting;
7. integrity throughout broadcast chain; and
8. open characters obscure captions - provider responsibility.

QUALITY GUIDELINES

We urge the Commission to develop non-technical quality guidelines now. [re: FCC 97-4, ¶¶111, 119]. However, such guidelines should be directory models rather than mandatory rules. The purpose of directory model guidelines would be to permit a program owner to enter into a contract with a caption service provider, and contractually stipulate that the services rendered shall be consistent with the FCC model guidelines. The Commission could encourage this application of model guidelines. Mandatory guidelines are not necessary at this time. Competitive market forces ulti-

mately regulate quality. Service providers who routinely fail to meet the model guidelines will not succeed in the marketplace. Much more critical technical problems exist which warrant enforcement by the Commission. The Commission is not well suited to enforce detailed captioning standards, as demonstrated by comments on §76.606 problems.

We believe the content oriented subjects 1-5 listed at ¶106 are too extensive. Content is subjective and artistic, and imperative terms such as "all," or "must," are too restrictive. However, some guidelines would be helpful to the industry.

Rather than accredit captioners as discussed at ¶¶108, 120, we believe the Commission should establish a mandatory rule that at the start or end of a program, the name and address of a caption service provider should be disclosed in a prescribed form. This will go a long way towards making caption service providers accountable for quality. This will enable the public to address concerns to the service providers prior to filing a complaint with the FCC.

As an additional public service, the Commission could maintain a public record which lists complaints filed about caption service providers in the manner proposed by the Commission at ¶¶122, 123. This would provide a deterrent to poor captioning quality, and would more effectively maintain a high level of quality than would accreditation.

We specifically concur with the Commission's assessment at ¶114 that something of moderate quality is much better than nothing of high quality. We encourage the Commission to establish quality guidelines for "simplistic captioning" where a viewer can read only the most critical information to a program. This two level approach to caption quality would enable certain real time caption jobs to be performed by inexpensive typists rather than stenographers. Such an approach supports the purpose of the statute by providing at least partial access through closed captioning, until such time that full access is economically possible.

Simplistic captioning could be allowed as part of the transition rules for certain classes of programming like textual, short form advertising, home shopping, interstitials, fund raising, weather, and sports. The Commission Proposal already refers to the

concept of simplistic captioning for many of these program classes. We encourage a more formal definition, and rules for when it is permissible to provide only partial access to a program through simplistic closed captioning.

DISCLOSURES

Para Technologies has secured rights to manufacture and distribute advanced technology line 21 data equipment.

Respectfully submitted,

Dated: 2-25-97

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